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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,330	12/20/2000	Tasuku Honjo	Q61536	5233

7590 12/17/2003  
Sughrue Mion Zinn Macpeak & Seas  
2100 Pennsylvania Avenue NW  
Washington, DC 20037

EXAMINER

KERR, KATHLEEN M

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/674,330	HONJO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kathleen M Kerr	1652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8,10,11,13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8,10,13 and 14 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
     a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Application Status***

1. In response to the previous Office action, a non-Final rejection (mailed on May 29, 2003), Applicants filed an amendment received on September 29, 2003. Said amendment amended Claims 1-4, 8, and 14 and cancelled Claim 12. Thus, Claims 1-8, 10, 11, 13, and 14 are pending in the instant Office action and will be examined herein.

### ***Priority***

2. As previously noted, the instant application is granted the benefit of priority for the International Application No. PCT/JP99/02283 filed on April 28, 1999 and Japanese application 10-119731 filed on April 28, 1998.

### ***Drawings***

3. As previously noted, the drawings have been approved by the Draftsmen and are, therefore, entered as formal drawings acceptable for publication upon the identification of allowable subject matter.

### ***Withdrawn - Claim Objections***

4. Previous objection to Claim 3 under 37 C.F.R. § 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim is withdrawn by virtue of Applicants' amendment.

***Withdrawn - Claim Rejections - 35 U.S.C. § 112***

5. Previous rejection of Claims 1-2 and 10-14 under 35 U.S.C. § 112, second paragraph, as being indefinite for the term "substantially" is withdrawn by virtue of Applicants' amendment.
6. Previous rejection of Claims 1-4, 6-8 and 10-14 under 35 U.S.C. § 112, second paragraph, as being indefinite for the inclusion of redundant sequences is withdrawn by virtue of Applicants' amendment.
7. Previous rejection of Claims 1-3, 6-8 and 10-13 under 35 U.S.C. § 112, second paragraph, as being indefinite for the function of "functioning in the suppression of smooth muscle cell proliferation" is withdrawn by virtue of Applicants' amendment.
8. Previous rejection of Claim 12 under 35 U.S.C. § 112, second paragraph, as being indefinite for the abbreviation "PTCA" is withdrawn by virtue of Applicant's cancellation of said claim.
9. Previous rejection of Claims 11-12 under 35 U.S.C. § 112, first paragraph, enablement, is withdrawn by virtue of Applicant's cancellation and/or amendment of said claims.

***Withdrawn - Claim Rejections - 35 U.S.C. § 101***

10. Previous rejection of Claims 3-5 and 14 under 35 U.S.C. § 101 is withdrawn by virtue of Applicant's amendment.

### NEW OBJECTIONS/REJECTIONS

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. § 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. § 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. § 101.

11. Claim 11 is objected to under 37 C.F.R. § 1.75 as being a substantial duplicate of claim 10. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See M.P.E.P. § 706.03(k).

### *Summary of Pending Issues*

12. The following is a summary of the issues pending in the instant application:

- a) Claim 11 stands objected to as a duplicate of Claim 10.

### *Conclusion*

13. Claims 1-8, 10, 13, and 14 are allowed; Claim 11 is objected to. Applicants must respond to the objections/rejections in each of the numbered sections in this Office action to be fully responsive in prosecution.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

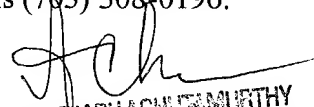
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. § 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (703) 305-1229. The examiner can normally be reached on Monday through Friday, from 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (703) 308-3804. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Kathleen M Kerr, Patent Examiner, 1652  
December 8, 2003

  
PONNATHUPURA ACHUTAMURTHY  
SUPERVISORY PATENT EXAMINER  
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